

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
August 18, 2008**

Members Present:

Michael Gallagher
Paul Klein
Liz Victor
Edward Hardemon
Helen Dutmer
Mary Rogers
Andrew Ozuna
Gene Camargo
Rollette Schreckenghost
Maria Cruz

Staff:

Fernando De Leon, P.E. Assistant Director
Christopher Looney, Planning Manager
Rudy Niño, Senior Planner
Michael Farber, Planner
Jacob Floyd, Planner
Paul Wendland, Asst. City Attorney
David Simpson, Chief Sign Inspector
Andrea Giles, Senior Management Analyst

Call to Order

Pledge of Allegiance to the U.S. and Texas Flags.

Mr. Gallagher, Chairman, called the meeting to order and called roll of the applicants for each case.

Mr. Klein made a motion to move **Case No. 08-090** to the end of the agenda and was seconded by Ms. Rogers and all members voted in affirmative.

Mr. Klein made a motion to reverse the order of the Sign Master Plans and was seconded by Ms. Rogers and all members voted in affirmative.

CASE NO. A-08-082

Applicant – Theodore Martinez
Lot 10, Block 7, NCB 16678
5123 Capistrano Street

Zoned: "R-6" Residential Single-Family District

The applicant is requesting for a 2-foot 6-inch variance from the requirement that fences in rear yards not to exceed 6 feet, in order to erect an 8-foot 6-inch fence in the side and rear yard.

Jacob Floyd, Planner, presented background and staff's recommendation of approval on this case. He indicated 26 notices were mailed, 2 were returned in favor and 4 were returned in opposition and Valencia Neighborhood Association is in opposition.

Theodore Martinez, applicant, stated the reason for this request is for the safety of his children while out in the backyard in the family pool. He also stated he did not know that he had to pull permits for the construction of this fence. He further stated he has concerns with the neighbors watching his children.

No citizens to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-082 closed.

MOTION

A motion was made by **Mr. Klein**. Re Appeal Case No. **A-08-082**, the applicant is **Theodore Martinez**, the owner of the property is **Theodore and Deborah Martinez**, this request is for a **2-foot 6-inch variance from the requirement that fences in rear yards not exceed 6 feet, in order to erect an 8-foot 6-inch fence in the side and rear yard**, the legal description is **Lot 10, Block 7, NCB 16678**, the address is **5123 Capistrano Street**, the zoning is **"R-6" Residential Single-Family District**. I move that the Board of Adjustment grant the applicants request in this case for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically we find that such variance will not be contrary to the public interest in that **the topography of the land in this particular case along El Mirador does along clear sight line from across the street from public premises into the back yard of applicant**. Due to the special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the code does make provisions for height variances that we have talked about as far as staff indicated the approximate vertical distance from the pool deck down to the El Mirador street is approximately 4-feet 9-inches or so and this is a special condition that this variance would address**. So that the spirit of the ordinance is observed and substantial justice is done in that **the fence would allow the applicant the enjoyment and privacy of his property**. Such variance will not authorize the operation of a use other than those uses specifically authorized for the districts in which the property for which the variance is sought is located in that **the property is zoned Residential "R-6". This is not a change to the zoning**. Such variance will not substantially or permanently injure the district in which the variance is sought in that **the solid screen fence is in character material wise with similar fences in the neighborhood**. Such variance will not alter the essential character of the districts in which the variance is sought in that **privacy fences are common features in residential neighborhoods**. Such variance will be in harmony with the spirit and purpose of this chapter in that **it does allow the applicant to have the peaceful use of his personal pool property in his backyard**. The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created, and not merely financial, and are not due to or the result of the general conditions in the district in which the property is located in that **the topography of the land and how it affects the rear yard and the use of the backyard is specifically causing this variance request to come before the board**. The variance will not substantially weaken the general purposes of this chapter of the regulations herein established for the specified district in that **there is no change**

to the zoning, it will remain residential. The variance will not adversely affect the public health, safety or welfare of the public in that **enclosure of the swimming pool is good sound practice and this will not cause a visual traffic obstruction to the knowledge of this board member.** The motion seconded by **Mr. Hardemon.**

AYES: Cruz, Dutmer, Rogers

NAY: Klein, Hardemon, Camargo, Schreckenghost, Victor, Ozuna, Villyard, Gallagher

THE VARIANCE WAS NOT GRANTED.

CASE NO. A-08-083

Applicant – Ruben and Sylvia Berrones
Lot 2, Block 10, NCB 12270
122 Chesswood Drive
Zoned: "R-5" Residential Single-Family District

The applicant is requesting for a 2-foot, 7-inch variance from the requirement that a minimum 5-foot side setback be maintained in "R-5" zoning districts, in order to keep a carport 2 feet, 5 inches from the side property line.

Michael Farber, Planner, presented background and staff's recommendation of denial of these variances. He indicated that there were 25 notices mailed, 2 were returned in favor and 2 were returned in opposition.

Ruben Berrones, applicant, stated he rebuilt this carport after a fire to help him with his two special needs son. He also stated he was unaware that the roofer was responsible for making sure the preexisting carport met all codes. He further stated he feels the 30 inches of the variances has never encroached on the neighbor's property and cannot affect property value, nature views, light and security. He will build a fire wall to ensure the safety of the neighbor.

The following citizen(s) appeared to speak:

Orfa Vargas, citizen, spoke in favor.

Hector Chacon, citizen, spoke in opposition.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-083 closed.

MOTION

A motion was made by **Mr. Ozuna**. Regarding Appeal No. **A-08-083**, variance application for **Ruben and Sylvia Berrones**, subject property description **Lot 2, Block 10, NCB 12270**, located at **122 Chesswood Drive**, the applicant is **Ruben and Sylvia Berrones**, the request is for the applicant who is **requesting a 2-foot, 7-inch variance from the requirement that a minimum**

5-foot side setback be maintained in "R-5" zoning districts, in order to keep a carport 2 feet, 5 inches from the side property line. I move that the Board of Adjustment grant the applicants request regarding Appeal No A-08-083, application for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically we find that such variance will not be contrary to the public interest in that the applicant will build according to all applicable fire codes which would require a firewall constructed along the border of the property and the adjoining neighbor. Additionally we require that any rain guttering systems be maintained to keep the water of the adjoining neighbor's property. Due to the special conditions a literal enforcement of the ordinance would result in an unnecessary hardship in that the carport has been constructed in a craftsman work like manner and to remedy the situation would require basically a demolition of the garage in construction completed today. So that the spirit of the ordinance is observed and substantial justice is done in that no other requests for land use changes from the "R-5" district are being requested. Such variance will not authorize the operation of a use other than those uses specifically authorized for the districts in which the property for which the variance is sought is located in that again no changes in the land uses are being requested and existing land uses including the "R-5" zoning would remain. Such variance will not substantially or permanently injure the district in which that variance is sought in that we have seen by the evidence presented today that there is provanderous of garages built to the property lines and it is common through the neighborhood. Such variance will not alter the essential character of the districts in which the variance is sought in that again such driveway configurations are common through the neighborhood and we actually have support from the two adjoining property owners that would be affected by the property. Such variance will be in harmony with the spirit and purpose of this chapter in that no other land uses or changes are being requested and the "R-5" zoning district will remain. The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created, and not merely financial, and are not due to or the result of the general conditions in the district in which the property is located in that the applicant had a fire which necessitated the reconstruction of the property and we have seen from evidence today that the reconstruction is an enhancement to the neighborhood. The variance will not substantially weaken the general purposes of this chapter of the regulations herein established for the specified district in that again the existing zoning and land use patterns are to remain and no uses changes to that are requested today. The variance will not adversely affect the public health, safety or welfare of the public in that all construction will be completed in a workmanship manner and the city will approve or review the permits for the firewall and the firewall will be constructed according to fire code. The motion seconded by Mr. Ozuna.

AYES: Ozuna, Klein, Cruz, Rogers, Schreckenghost, Dutmer

NAY: Villyard, Hardemon, Camargo, Victor, Gallagher

THE VARIANCE WAS NOT GRANTED.

CASE NO. A-08-086

Applicant – Candlewood Suites

Lot 16, Block 6, NCB 14445

Zoned: "C-3" General Commercial District and "C-2" Commercial District

The applicant is requesting a 2-foot variance from the requirement that fences in side and rear yards be no taller than 6 feet in height, in order to erect an 8-foot tall side and rear-yard fence.

Mike Farber, Planner, presented background and staff's recommendation of approval on this case. He indicated 11 notices were mailed, none were returned in favor and none were returned in opposition.

Jacqueline Chavez, representative, stated the reason for this variance is for security of the vehicles and to avoid the break-ins caused to these vehicles which causing the hotel to lose revenue. She also stated they want to provide safety and privacy for the guests that stay at the hotel.

The following citizen(s) appeared to speak:

Angie Adams, citizen, spoke in favor.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-086 closed.

MOTION

A motion was made by **Ms. Rogers**. Regarding appeal No. **A-08-086**, variance application for a **2-foot variance from the requirement that fences in side and rear yards be no taller than 6 feet in height, in order to erect an 8-foot tall side and rear-yard fence**, subject property **Lot 16, Block 6, NCB 14445**, located at **9350 IH 10 West**, the applicant being **HPT TRS IHG-1, Inc.** I move that the Board of Adjustment grant the applicant's request regarding this appeal, for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically we find that such variance will not be contrary to the public interest in that **this fence will not alter the overall appearance or adversely affect the character of the area**. Due to the special conditions a literal enforcement of the ordinance would result in unnecessary hardship in that **there is a crime potential as demonstrated by the various crimes that have occurred on the property and the property needs to be secured**. So that the spirit of the ordinance is observed and substantial justice is done in that **protection for this business will be provided with the additional height of fencing**. Such variance will not authorize the operation of a use other than those uses specifically authorized for the districts in which the property for which the variance is sought is located in that **security fences of similar heights are located on neighboring sites around the business**. Such variance will not substantially or permanently injure the district in which that variance is sought in that **the**

variance will not have a negative impact on the neighborhood or the surrounding area. Such variance will not alter the essential character of the districts in which the variance is sought in that **the proposed fencing is in keeping with the businesses around that area.** Such variance will be in harmony with the spirit and purpose of this chapter in that **the proposed fence will maintain quality for the building and the area.** The side yard fence description be that basically that property line which runs in a north westernly fashion between the subject property and the apartment complex that is adjacent to Parkdale Blvd. and also the generally rear yard property line which is approximately in the southwesternly fashion which would basically try to explain the limits of the variance request for the 8-foot fence. The exhibit is contained within the board packet which is called plot plan for Case A-08-086 included in the agenda packets. The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created, and not merely financial, and are not due to or the result of the general conditions in the district in which the property is located in that **vandalism is connected within an adjacent apartment complex which needs to be fenced off from the subject property.** The variance will not substantially weaken the general purposes of this chapter of the regulations herein established for the specified district in that **the proposed variance will not weaken the overall zoning plan of that area.** The variance will not adversely affect the public health, safety or welfare of the public in that **the proposed fence will not in any way create or cause an adverse affect to the public.** The motion seconded by Mr. Camargo.

AYES: Rogers, Camargo, Cruz, Ozuna, Schreckenghost, Klein, Hardemon, Dutmer, Villyard, Victor, Gallagher

NAY: None

THE VARIANCE WAS GRANTED.

Board members took a 10-minute recess.

Ms. Schreckenghost left at 2:45 p.m.

CASE NO. A-08-087

Applicant – LHS III Property Two, LLC
Lots 37 and the East 35.72 feet of Lot 36, NCB 8564
210 West Olmos Drive
Zoned: "C-2" Commercial District

The applicant is requesting a 30 foot variance from the Unified Development Code standard that a minimum 30-foot setback be maintained in C-2 zoning districts, when abutting residential uses or zoning districts, in order to erect a structure along the rear property line.

Jacob Floyd, Planner, presented background and staff's recommendation of denial of these variances. He indicated that there were 27 notices mailed, 3 were returned in favor and 1 was returned in opposition and no response from Spring Creek Neighborhood Alliance.

Luther Soules III, owner, stated many of the buildings in the area have their parking lot backing West Olmos Drive. He also stated he thought he was going to be able to use but he did not know that it did not meet to code. He further stated the space he would have left after ADA bathrooms and access would be inadequate for real use. The parking he would design would not back out onto McCullough and the customers would be able to back out onto a busy city street.

Terry Callins, representative, stated the original scope was to remodel the existing structure and bring it up to code. She also stated that in that process the cost to renovate would be far exceed the cost to build something new which the current structure did not meet to code with handicap accessibility codes. She further stated the hardship with maintaining the 30-foot setback is that there was not enough parking.

The following citizen(s) appeared to speak:

Dorothy Guevara, citizen, spoke in opposition.

Jesse Ellisor, citizen, spoke in opposition.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-087 closed.

MOTION

A motion was made by **Mr. Ozuna**. Re Appeal No A-08-087, variance application for **LHS III Property Two, LLC**, subject property description **Lot 37 and the East 35.72 feet of Lot 36, NCB 8564**, located at **210 West Olmos Drive**, the applicant again is **LHS III Property Two, LLC**, the request is for a **30-foot variance from the Unified Development Code standard that a minimum 30-foot setback be maintained in C-2 zoning districts, when abutting residential uses or zoning district, in order to erect a structure along the rear border line**. I move that the Board of Adjustment grant the application request regarding appeal No. A-08-087, application for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically we find that such variance will not be contrary to the public interest in that **the new structure that is proposed will be built with the current and modern building codes and fire codes which would replace the existing structure which is an older building ,not ADA accessible and will be built to all city codes. The neighbors that will be most impacted by the new construction are not in opposition or have not filed any opposition to the proposed.** Due to the special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **if we were to impose a 30-foot setback on the property the result would be a 20-foot bay built property which would be unusable for the current any proposed use and the existing structure which would most likely remain would remain basically an unusable property.** So that the spirit of the ordinance is observed and substantial justice is done in that **mentioned the new building would be up to all city codes.** Such variance will not authorize the operation of a use other than

uses specifically authorized for the districts in which the property for which the variance is sought is located in that **the existing "C-2" zoning will remain.** Such variance will not substantially or permanently injure the district in which that variance is sought in that **we have seen testimony there are buildings along Olmos Drive that have the zero setback built up to the property line so the subject property if built will be within the character of the neighborhood.** Such variance will not alter the essential character of the districts in which the variance is sought **again for the same items mentioned there are existing building with that are zero lot in the neighborhood.** Such variance will be in harmony with the spirit and purpose of this chapter in that **the proposed variance that would allow for the new construction and for the new building that would have handicap zoning and would improve the safety of the parking situation and that you would head out parking versus the current situation.** The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created, and not merely financial, and are not due to or the result of the general conditions in the district in which the property is located in that **the current "C-2" zoning was imposed on the property after the buildings had been constructed so that the reconstruction of any kind of building on that property would be a hardship given the 30-foot setback.** The variance will not substantially weaken the general purposes of this chapter of the regulations herein established in for the specified district in that **the existing "C-2" zoning will remain.** The variance will not adversely affect the public health, safety or welfare of the public in that **any construction proposed for the property will be built to current fire code and the appropriate building codes.** The motion seconded by Ms. Dutmer.

AYES: Ozuna, Dutmer, Camargo, Cruz, Rogers, Victor, Villyard, Hardemon, Klein, Gallagher

NAY: None

THE VARIANCE WAS GRANTED.

CASE NO. A-08-088

Applicant – Salvador Cardenas
Lot 5, Block 4, NCB 2309 "Lakhahi Subdivision"
1602 West Commerce Street
Zoned: "I-1" General Industrial District

The applicant is requesting a 20-foot variance from the Unified Development Code standard that a minimum 30-foot front setback be maintained in I-1 zoning districts in order to erect a structure 10 feet from the front property line.

Jacob Floyd, Planner, presented background and staff's recommendation of approval of these variances. He indicated that there were 25 notices mailed, one notice was returned but it did not indicate if they were in favor or opposition.

Salvador Cardenas, owner, stated he is requesting this variance because he could not get a brand of gasoline approved which caused his previous variance that was granted to expire.

The following citizen(s) appeared to speak:

Rufi Mahesania, citizen, spoke in favor.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-088 closed.

MOTION

A motion was made by **Mr. Villyard**. I move that the Board of Adjustment in Case No **A-08-088, requesting a 20-foot variance from the Unified Development Code standard that a minimum 30-foot front setback be maintained in I-1 zoning districts in order to erect a structure 10 feet from the front property line, the property known as Lot 5, Block 4, NCB 2309 "Lakhahi Subdivision", 1602 West Commerce Street.** I move that the Board grant the applicant's request, application for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Such variance will not be contrary to the public interest in that **the area has many commercial and industrial uses and it is consistent with those uses.** A literal enforcement of the ordinance would result in unnecessary hardship in that **during raining seasons there are power outages and an inconvenience to the customers dispensing gas.** So that the spirit of the ordinance is observed and substantial justice is done in that **this is the second time we have reviewed this case and the first time it passed unanimously and I believe many of those factors are still present.** Such variance will not authorize the operation of a use other than uses specifically authorized for the districts in which the property for which the variance is sought is located in that **it is a convenience store with gas pumps and that is totally consistent with the area.** Such variance will not substantially or permanently injure the district in which the variance is sought **for the same reasons.** Such variance will not alter the essential character of the districts in which the variance is sought **because of the industrial nature of the area.** Such variance will in harmony with the spirit and purpose of this chapter in that **it is an enhancement to the retail facility that is there.** The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created, and not merely financial, and are not due to or the result of the general conditions in the district in which the property is located in that **it is a convenience store within an industrial area and that is necessary for the people working in the area.** The variance will not adversely affect the public health, safety or welfare of the public in that **it imposes no hardship or danger to the people working and traveling in the area. In fact it provides an enhancement to those wishing to utilize the facility.** The motion seconded by **Mr. Camargo.**

AYES: Villyard, Camargo, Dutmer, Rogers, Cruz, Ozuna, Hardemon, Klein, Victor, Gallagher

NAY: None

THE VARIANCE WAS GRANTED.

CASE NO. A-08-091

Applicant – Christopher and Elizabeth Ledesma
Lot 23, Block 15, NCB 9386
1135 Cantrell Drive
Zoned: “MF-33” Multi-Family Residential District

The applicant is requesting 1) a 5-foot variance from the Unified Development Code standard that a minimum 10-foot front setback be maintained in “MF-33” zoning districts when developed as single-family lots, in order to keep an existing residential structure 5 feet from the front property line, and 2) a 9-inch variance from the requirement that predominantly open front yard fences be no taller than 4 feet, in order to keep an existing predominantly open front yard fence that is 4-foot, 9-inches tall.

Jacob Floyd, Planner, presented background and staff’s recommendation of approval of the first variance and denial of the second variance. He indicated that there were 20 notices mailed, 4 were returned in favor.

Elizabeth Ledesma, owner, stated the reason for this is because a plan reviewer with the city informed them that they did not have to a 20-foot side setback and that they could have a 5-foot side setback. She also stated she had originally submitted plans with a 20-foot side setback. She further stated the city approved the 5-foot side setback.

The following citizen(s) appeared to speak:

Christopher Ledesma, citizen, spoke in favor.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-091 closed.

MOTION

A motion was made by **Mr. Camargo**. I would like to move that in **Case A-08-091**, the request of **Christopher and Elizabeth Ledesma**, on **Lot 23, Block 15, NCB 9386**, also known as **1135 Cantrell Drive**, that the Board of Adjustment grant a variance to **both one and two items that is described in the notice that was sent out**. They will be granted a variance for a request of a **5-foot variance from the Unified Development Code standard that a minimum 10-foot front setback be maintained in “MF-33” zoning districts when developed as single family lots, in order to keep an existing residential structure 5 feet from the front property line, and secondly a 9-inch variance from the requirement that predominantly open front yard fences be no taller than 4 feet, in order to keep an existing predominantly open front yard fence that is 4-foot, 9-inches tall**. It is a feeling that such variances will not be contrary to the public interest in that **of all the notices that were mailed to the adjacent property owners none were in opposition and four were returned in favor**. Due to the special conditions, a

literal enforcement of the ordinance would result in unnecessary hardship in that **appears from information submitted by the applicant that perhaps there was some misunderstanding as to where this structure could be built in light of recent platting, street dedications, setback lines, etc.** The structure is not complete, according to the information submitted all the required inspections have been made on the property and it is only at this point in time that this structure has come into question as far as the setback requirements are concerned. In reference to the fence height from the appearance on photographs that have been show to us by staff it does not appear the nine inches about the 4 foot that is permitted in the code is obtrusive to the neighborhood and takes away from any of the surrounding developments. So that the spirit of the ordinance is observed and substantial justice is done in that **the fencing will provide a form of security to this newly constructed residence.** Such variance will not authorize the operation of a use other than uses specifically authorized for the districts in which the property for which the variance is sought is located in that **the property is zoned multi-family residential but developed as single family use for this family.** Such variance will not injure the district in which that variance is sought in that **the development that has occurred on this property is keeping with the surrounding area.** Such variance will not alter the essential character of the districts in which the variance is sought in that **the development appears to be contribute to the improvement of the overall area.** Such variance will be in harmony with the spirit and purpose of this chapter in that **in light of all the approvals and reviews that were given on construction plans, this oversight occurred and should be justified and allowed to stand by this board granting the variance.** The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created, and not merely financial, and are not due to or the result of the general conditions in the district in which the property is located in that **various discussions that apparently this family has had in the process of reviewing of construction plans and that they move forward feeling that they had the assurances of the location of the structure was appropriately located.** The variance will not substantially weaken the general purposes of this chapter of the regulations herein established in for the specified district in that **the development that already exists is in keeping with the surrounding area.** The variance will not adversely affect the public health, safety or welfare of the public in that **permits have been obtained for the construction of this residence and according to the applicant those inspections have been complied with and approved by the city.** The motion seconded by Mr. Villyard.

AYES: Camargo, Villyard, Cruz, Rogers, Dutmer, Ozuna, Hardemon, Klein, Victor, Gallagher

NAY: None

THE VARIANCE WAS GRANTED.

CASE NO. A-08-090

Applicant – M & M Orthodontics
Lot 10, Block 12, NCB 18163
9820 Braun Road
Zoned: "C-3" General Commercial District

The applicant is requesting a 35-foot variance from the requirement that on-premise freestanding signs be spaced a minimum of 150 feet apart, in order to install an on-premise sign 115 feet from an existing freestanding on-premise sign.

Michael Farber, Planner, presented background and staff's recommendation of approval of the first variance and denial of the second variance. He indicated that there were 26 notices mailed, none were returned in favor and none were returned in opposition

David Simpson, Chief Sign Inspector, stated that if the sign was put on Amelia Pass it would not require them to get a variance but they would have to remove the oak tree. He also stated it has two signs approved and to make room the owner would have to remove the oak tree or relocate the existing free standing sign.

Glen Crawford, representative, stated the reason for this request is because the owner has already installed the sign in the requested sign. He also stated several of the areas already have free-standing signs. He further stated the owner has made a concession on a big free-standing sign that is to come and they are willing to take a 15-foot reduction in height and a hundred square foot reduction in the square footage allowance for that one in hopes that they can get a variance granted to install a smaller sign to the left of this one.

The following citizen(s) appeared to speak:

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-090 closed.

MOTION

A motion was made by **Mr. Ozuna**. Regarding Appeal No A-08-090, variance application for **M & M Orthodontics**, property located at **9820 Braun Road**, subject property description **Lot 10, Block 12, NCB 18163**, the request is for a **35-foot variance from the requirement that on-premise freestanding signs be spaced a minimum of 150 feet apart, in order to install an on-premise sign 115 feet from an existing freestanding on-premise sign**. I move that the Board of Adjustment grant the applicant's regarding Appeal No. **A-08-090**, application for a sign variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined. Specifically we find that **in order to save the existing century oak tree we are requesting the said variance**. Additionally the applicant has **agreed to reduce both the height and the square footage of the sign to provide an incentive for us to approve the said variance**. The variance is necessary because strict enforcement of this article prohibits any reasonable opportunity to provide adequate signs on the side, considering the unique features of a site **specifically the said oak tree**. A denial of the variance would probable cause a cessation of legitimate, longstanding active commercial use of the property and after seeking one or more findings set forth the board finds that granting the variance does not provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated and granting the variance will not have a substantially adverse impact upon neighboring properties and granting the variance will not substantially conflict with the stated purposes of this article. The motion seconded by **Ms. Dutmer**.

AYES: Ozuna, Dutmer, Rogers, Cruz, Hardemon, Villyard, Victor, Camargo, Klein, Gallagher

NAY: None

THE VARIANCE WAS GRANTED.

Board members took a 10-minute recess.

Mr. Hardemon left at 4:25 pm.

Sign Master Plan No. 08-015

David Simpson, Chief Sign Inspector, briefed Board Members on Sign Master Plan for Braun Pointe, located at Loop 1604 and Braun Road.

Ms. Dutmer made a motion to approve **Sign Master Plan No. 08-015** and was seconded by **Mr. Camargo** and all members voted in the affirmative.

Sign Master Plan No. 08-014

David Simpson, Chief Sign Inspector, briefed Board Members on Sign Master Plan for Inwood-Randolph, located at Bitters Road and Loop 1604.

Ms. Dutmer made a motion to approve **Sign Master Plan No. 08-014** and was seconded by **Ms. Rogers** and all members voted in the affirmative.

Consideration of proposed amendments to Chapter 28: Signs and Billboards, Sections 28-6 Definitions and 28-245 Nonconforming Sign Abatement.

David Simpson, Chief Sign Inspector, briefed Board Members on proposed amendments to Chapter 28: Signs and Billboards, Sections 28-6 Definitions and 28-245 Nonconforming Sign Abatement.

Board members discussed item and agreed to table the item on a futher date and all members voted in the affirmative.

Approval of the Minutes

Ms. Rogers made a motion to approve August 18, 2008 minutes and **Ms. Dutmer** seconded it and all members voted in the affirmative.

There being no further discussion, meeting adjourned at 4:59 p.m.

APPROVED BY: Michael R. Gallagher OR _____
Michael Gallagher, Chairman Paul Klein, Vice-Chair

DATE: Sep 15, 2008

ATTESTED BY: Christopher J. Looney DATE: 9-15-08
Christopher J. Looney
Development Services, Planning Manager